tales more graphic descriptions of buildings, especially their interior, than are given here. We do not allude merely to the Hall and the cathedral; the author is perhaps even more successful in the Highland hovel, and in the contrast between its smoke and filth, its wretched furniture and vulgar brawls, and the fresh, tranquil, pastoral beauties which surround it. He always delights in the picturesque effect of such scenes. But we must not go over the ground again. On the whole, there is matter here for a better book, and proofs on all hands that the author is not exhausted, that he has not yet forsaken invention and become an artisan.

ART. VIII.—*Reports of cases argued and determined in the Supreme Judicial Court of the Commonwealth of Massachusetts. Vol.* xiv. *Containing the cases for the year* 1817. *With a Supplement. By Dudley Atkins Tyng, Esq. Counsellor at Law.* Boston; Cummings & Hilliard, 1818.

IT is but fourteen years since the legislature of this Commonwealth provided, by statute, for the appointment of a reporter of the decisions of the Supreme Judicial Court; yet the reports of those decisions have already swoln to fourteen volumes.

About thirty years ago, the Russian code of laws was reprinted in this country, in the compass of a common spelling-book. Many visionary men, at that time, exclaimed with wonder at the comparatively massy bulk of our own statutes, and seriously talked of simplifying our jurisprudence and reducing all our laws into a narrow, elementary compend. Reformers sprang up, like locusts, in the time of Shays' Insurrection—and our statute-book now bears witness to their folly. These crude notions had their day and disappeared. The lessons of a long experience were confirmed by more correct and enlarged views of the principles of civil liberty, and our jurisprudence was suffered to remain without further attack, and to be gradually improved by the wisdom of enlightened and practical men. The discussions of the principles of government, which were called forth by our secession from Great Britain and the establishment of new constitutions, convinced all rational minds that there can be no security for property or liberty, where the laws are as short and few as in the Russian code.—In a despotism, it is of little

importance whether the pre-established edicts are few or many, or whether there are any at all. The reigning monarch cannot be controlled by them. If he refuse to adhere to them, after they are promulgated, no earthly power can call him to account, or arrest the course of a new and different command.

But where every action and word of a man's life, when called in question, are to be decided upon by fixed principles and rules—where nothing is left to the caprice, or even to the conscience of the judge—it is manifest to the meanest capacity, that no collection of legislative wisdom is competent to embody into a system the rules, which are to govern the multifarious, the infinitely diversified affairs of men. And yet it is clear, that without a fixed rule of some sort, existing before the case to which it is applied, there can be no liberty and no security. The judge must decide arbitrarily, or he must refuse cognizance because no remedy is provided. It would be of very little consequence to the suitor or to the public, which of these courses the judge might pursue.

These suggestions justify, we think, our zealous attachment to the common law,—our fathers' birthright and boast,—our own glory and defence. They also sufficiently account for our disgust and indignation at those who affect to despise, and who, with insufferable self-conceit, revile this venerable and sacred code. The fog, in which the boastful reformers of Shays' time were bewildered, has recently confused the vision of less factious malcontents. Through the medium which surrounds them, they can discern nothing in the common law, but '*the scant and jagged pattern of a beggar's doublet, patched and darned by a purblind housewife.*' Such is the enchantment by which they are affected,—and such the rhetoric they employ. These champions of reform would prescribe moral obligation to judges as their only rule of decision. But in thus gazing after distant and unattainable objects, they overlook all obvious ones. They do not see that very many litigated questions involve no moral considerations—that often it is neither immoral nor unneighbourly for a defendant to resist the claim that is made on him; and that a plaintiff's ultimate defeat is no proof of his having attempted to enforce what morality condemns. There must be a rule, where any freedom or security exists; and that rule, in the cases supposed, has no connexion with morals. Originally, it was of no importance how it might be settled—for the point to which it immediately applied, had nothing of

ethics about it. But the rule, when authoritatively settled, becomes sacred, and a departure from it, as it would introduce confusion, would violate morality. If it were necessary, a thousand examples might be adduced to illustrate this doctrine.

There is another fatal absurdity in the notion of referring the determination of causes to the judge's sense of moral obligation. It was long ago said, with as much justice as quaintness, that to make the chancellor's conscience the measure of the law, 'is all one as if they should make the standard for the measure the chancellor's foot. What an uncertain measure would this be! One chancellor has a long foot, another a short foot, a third an indifferent foot. It is the same thing with the chancellor's conscience.' (*Selden's Table-talk.*) All would be uncertainty, and not a whit preferable to the old trial by wager of battel. Judicial corruption would be forever dispunishable, unless the judge were subjected to the scrutiny of an inquisition.

It may appear very idle, thus to notice the projects of 'codification,' and of abolishing the common law, and substituting the judge's sense of moral obligation. But the apparent seriousness of some writers of late, from whom such notions were little to be expected, seemed to warrant a few remarks.—One thing may be said with certainty—that no honest man, who understands the common law as a system, will vilify it in the style we have noticed.

The common law is immemorial usage—a system which has been formed and matured by the experimental wisdom of ages, and which finds its highest eulogy in its practical effects. It is a system of principles; and the new points, which arise and are decided, are merely the application of those principles to new combinations of facts, for the purpose of attaining justice.

We would not be understood to mean, that the common law contains a complete body of principles, which are sufficient, when applied, for every possible purpose of justice. For though in the course of the many ages, during which the wants and wisdom of our British ancestors had been ripening and enlarging the system, previous to the settlement of this country, there was little left to be supplied for the exigencies of a people of the same general habits, pursuits and laws—yet some deficiencies are readily acknowledged. These, however, are extremely few—and can be supplied only by

the legislature. In such cases, where there is a grievance, the court cannot redress it without a statute. But it should be recollected, that in no human system can legal and moral obligations be made co-extensive.

It is not pretended that legal science, like mathematical, is founded on demonstration. There are, however, certain elementary principles, which stand in the place of the mathematician's axioms. And it is as true, theoretically at least, that there can be no new principles of common law, as that there can be no new mathematical certainties. The application and combination of principles already established will lead to results, which have not been anticipated, both in legal and mathematical science. But it is no more true now, that the three angles of a triangle are equal to two right angles, than it was before the flood. The antediluvians might have learned principles from which this proposition was demonstrable; but the joy, the boast and the benefits of the discovery were reserved for later ages. No profound mathematician thinks that his favourite science may not be further improved by some future Newton or La Place, and no lawyer, who deserves the name, thinks his science is brought to perfection, and placed beyond the improvement of a future Mansfield or Parsons.

To preserve and publish the decisions of the Supreme Judicial Court, as rules of future conduct in the business of life, and practice in court, and thereby to improve our system of jurisprudence, were the objects of the legislature in providing for the appointment of a reporter. That the volumes of reports would become numerous, was clearly foreseen; and that there never will be an end of new questions is certain. But almost every question, which has been decided for the last fourteen years, would have been new to those who were not present at the decision of it, had the reports not been published. So that while there is no pretence, that the publication of decided cases increases the number of suits, it is most manifest that it greatly diminishes them. A question once solemnly decided is not again brought before the court —and all have now the means of ascertaining what has been decided. If those who suggest the endless rise of new points, as a reason for not publishing the decisions of any, would for a moment consider what the law is, and to what an infinity of concerns it relates—they must also say, in order to be consistent, that because man is capable of endless progression in knowledge, he ought not to attempt to learn any thing.

The appointment of a reporter and the publishing of his reports were at first intended as an experiment, and the statute was limited in its operation to three years. It was afterwards extended, and is now made perpetual. Thus have the legislature pledged the patronage and exercised the authority of the Commonwealth, on this important subject. One or two other states have done the same, and we are happy to see that the governour of Connecticut has recently recommended the continuance of a similar statute in that state.

It is remarkable that in England nearly all the reports of judicial decisions are the result of voluntary industry. The Year Books were the work of persons specially appointed for the purpose. But early in the reign of Henry VIII. the office of reporter was discontinued. Lord Chancellor Bacon procured the revival of the office, in the reign of James I. but it was soon dropped again, and does not seem, while it continued, to have been productive of the advantages expected from it. Except the reports printed in the name of Hetley, there are none extant which are attributed to men nominated to the office of reporter—and his reports bear no marks of peculiar skill, information or authority. [*Preface to Douglas' Reports.*] Very few of the states in the union have provided for publishing the reports of decisions in their courts, and the United States have had an official reporter only one year. Massachusetts, we believe, took the lead in this work; and it has been no less to her advantage than to her honour.

The volume before us contains many interesting and important decisions.

In the case of *Adams* vs. *Howe and others*, p. 340, the court decided that the statute of 1811, entitled 'An act respecting public worship and religious freedom,' is not contrary to the Declaration of Rights. This will probably surprise most gentlemen of the profession who had not closely examined the subject. After the decision of the case of *Barnes* vs. *The First Parish in Falmouth*, 6 *Mass. Rep.* 401, it seems to have been the general opinion, that an unincorporated society could not constitutionally be vested with power to withdraw monies from a society that was incorporated. Of course it was supposed that the statute of 1811, whenever properly brought before the court, would be declared unconstitutional and void. But the reasoning of the court will convince every one that no such inference is fairly to be drawn from the former decision, and that the power of the legislature, on the subject of religious in-

stitutions, is not restrained by the declaration of rights, except as to liberty of conscience, choice of the mode of worship, and the establishment of a power in the state to require conformity to any creed or ritual. The mischiefs to be dreaded from the statute of 1811, did not escape the notice and animadversion of the court, nor the high and solemn responsibility of the legislature, which engaged in the execution of their powers on this important subject. The court declare themselves to be 'aware of the great inconveniences, and the injury to public morals and religion, and the tendency to destroy all the decency and regularity of public worship, which may result from a general application of the indulgence granted by the legislature in that statute.' But they very justly say, that if the legislature 'pass laws within the letter of the constitution, which have a tendency injuriously to affect the regular public worship, it is not for the judiciary power to control their course.'

Another constitutional question is decided in the case of *Wetherbee* vs. *Johnson and others*, p. 412. By a statute of the United States, passed March 3, 1815, it was provided, that in any action in a state court, brought for any thing done or omitted by an inspector or other officer of the customs—either party, after final judgment, might transfer such action by appeal, to the Circuit Court of the United States. After verdict and judgment, in an action of trespass, in which the defendants undertook to justify as officers of the customs for the district of Boston and Charlestown, they filed their claim of appeal to the Circuit Court of the United States.—This claim was disallowed by the Supreme Judicial Court, on the ground that the common law knows nothing of a re-examination of facts once tried by a jury, except in cases of new trial, which can only be granted by the court before which the trial was—and the seventh article of the amendments of the constitution of the United States provides, that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.' There is no such thing as an appeal in the common law system.

The statute in question was limited in its operation to one year—and had expired before the court decided upon its constitutionality. But it was in force when the defendant's claim

was filed; and their counsel did not wave a discussion, which disturbed its ashes.

We presume it is not in the power of a court, from which an appeal is given, to oust the court of appeal of its appellate jurisdiction. The defendants might have carried forward their claim to the Circuit Court, and the constitutionality of the statute of 1815 might thus have been submitted to the Supreme Court of the United States. It was doubtless a conviction, that the claim was hopeless, which kept this question out of the court, where statutes of the United States are by law to receive their final construction. That conviction, we think, must have been resistless.

Several mercantile cases of importance are reported in this volume.

In *Wiggin & al.* vs. *Amory*, p. 1, it was decided, that nothing short of a criminal act, or a fraudulent purpose executed, amounts to barratry in the master of a vessel. The master in this case took a commission and letter of marque for the *Volante*, from the American minister in France, without the permission or knowledge of the insurer—but the agents of the ship abroad and the joint supercargo were consulted, and agreed to the expediency of taking the commission, for the purpose, as it was understood, of defence only. The master's orders from his owners were to proceed on his return voyage as expeditiously as possible. The acts relied on by the plaintiffs, in support of the count for loss by barratry in the master, were his wearing ship—demanding surrender—receiving possession, and taking the crew of the prize on board of his ship—manning the prize and ordering her for France. This occupied two or three hours—and the ship was afterwards captured and condemned. The court, upon a scrutiny of all the authorities, held that the facts above stated proved only a deviation, and not barratry. They had previously decided (13 *Mass. Rep.* 118,) contrary to the case of *Denison* vs. *Modigliani*, 5 D. & E. 580, that *the taking* of a letter of marque, by a merchant vessel, without the underwriter's consent, does not avoid a policy on an expedition merely mercantile.

In the case of *Spafford & al.* vs. *Dodge & al.* p. 66, it was decided that the wages and provisions of the crew, during a detention by hostile seizure, are not to be allowed as a general average. This is contrary to the doctrine held by the Supreme Court of New York; but it seems to be a necessary inference from the principle settled in *Brooks* vs. *Dorr & al.* 2

Mass. Rep. 39, that the capture of a ship, which is afterwards restored to the owners, does not dissolve the contract for wages. This seems clearly to be the doctrine of the English courts, though we have seen no case in their books, in which they have been called upon to apply the inference, which was applied in the case we are stating. And the court in New York would not have brought wages and provisions into a general average, had they not denied the principle recognized by the courts in England and in this state, respecting the effect of capture and subsequent restoration upon the contract for wages.—It was also decided in the same case, that the owners of a vessel, which was chartered at a certain hire by the month, so long as she should be continued in the service of the hirers, were entitled to the hire to the time of her arrival at the port of destination, without any deduction for the time of her detention in consequence of capture.—The vessel, in this case, was captured on her homeward passage from St. Ubes, carried into Gibraltar, and there libelled as prize; but was acquitted on payment of certain costs and charges. She was detained under capture about four months. This point was not found to have been decided in the English courts, and Abbot, in his treatise on the law relative to merchant ships and seamen, expresses a doubt whether the hirer is chargeable, in such case, for the period of detention. The American editor of that work, however, seems to have taken the same view of the question, which is given by the court. As the Court of Kings Bench had very clearly expressed an opinion, that the wages of seamen hired by the month are not stopped during a detention by capture, if the ship is afterwards restored by the capturing power—and as our own court had formerly decided, that the hirer was liable on a similar charterparty for the time the vessel was detained in our own ports by an embargo—there seems to have been ample ground for supporting this part of the plaintiffs' claims.

The other point decided in this case was, that the costs and charges paid by the hirers, to procure restoration of the vessel and cargo, were a general average upon the vessel, cargo and freight, according to the value of each at the place of detention—and to be settled in the same manner as if the ship, cargo and freight, were owned by different persons; and without regard to any particular contracts relating to the voyage. As in this case the cargo was owned by the hirers for the voyage, so that no price was stipulated for the carriage

of the goods, the court directed the freight to be settled according to the customary rate of freight, at that time, from St. Ubes to the port of destination and discharge—deducting the amount of the wages, and provisions usually expended in that voyage. The general average on the freight was, on these principles, charged wholly on the plaintiffs.—The reasons, on which the court decided all these points, are most ably and clearly stated—the case is one of the most instructive that has been reported—and as it determines new questions, and is highly creditable to the learning and talents of the bench, we have thought proper to state it thus particularly.

The case of *Bridge* vs. *Eggleston*, p. 245, presents a decision on the rules of *evidence*, which is not only new but important. It is this, that the conduct and declarations of a grantor, *before the conveyance*, respecting the estate conveyed, and tending to prove a fraudulent intention on his part, are proper evidence for the jury, upon an inquiry into the validity of such conveyance by a creditor or subsequent purchaser, who alleges it to be fraudulent—provided knowledge of such conduct and declarations is brought home to the grantee before the conveyance.—There is no reported case in which this point has been before decided. The third edition of Phillipps on evidence, which is considerably enlarged by the compiler, and which refers to all the English decisions down to Michaelmas Term, 1817, contains nothing on this subject.

The court also decided on most satisfactory grounds, in the case of the *Commonwealth* vs. *Murphy*, p. 388—that the credibility of a female witness may be impeached, by proving her to be a common prostitute.

We were rejoiced to find, (p. 248,) that the court had refused to receive testimony from jurors respecting the manner and motives of their agreement to a verdict. In *Grinnel* vs. *Phillips*, 1 *Mass. Rep.* 542, two judges, against the opinion of the third, admitted such testimony. This was contrary to the English decisions then reported, and, as we think, was also repugnant to sound principles. 1 *D. & E.* 11. *Andrews* 382. 1 *Keb.* 811. Subsequent decisions in England, and also in the Supreme Court of Pennsylvania, have confirmed the rule now adopted in this state. In New York and Virginia, the courts have adopted an opposite practice.

In the case of *Hall* vs. *Little*, p. 204, we find the court have determined, that a foreigner is within the provision of the fourth section of the statute of limitations. The words of the statute,

applicable to this point, are—'from the time such impediment shall be removed.' In the English statute the expression is—'returned from beyond the seas.' It was settled, almost fifty years since, by the Court of Common Pleas in England—and has never been questioned—that the statute does not run against a foreigner until he comes into the realm. 3 *Wils.* 145. 2 *Bl. Rep.* 723 *S. C. A fortiori,* one would suppose, is a foreigner within the proviso in our statute. The Supreme Court of New York have also decided in the same manner, on the statute of limitations in that state, 3 *Johns.* 263. As the statute was enacted in this Commonwealth, sixteen years after the decision cited from *Wilson,* and was clearly intended to embrace all the provisions of the several English statutes on the subject,—we were surprised to find, by the suggestion of the court, that this decision will probably be contrary to the common impression of the bar. It is true that *Ballentine,* in his treatise on the statute of limitations, has strangely omitted this point—and *Brook's Reading,* besides being extremely scarce,* is confined to the limitation of real actions, which a foreigner cannot maintain at any time. Still we should not have suspected that any lawyer would question the soundness of the construction given to the statute in this case.

In the case of *Otis* vs. *Warren,* p. 240, it is decided that non-tenure *may* be pleaded in bar. A dictum to the contrary is reported in *Keith* vs. *Swan,* 11 *Mass. Rep.* 217. The point was not much considered in that case, as there was another ground upon which the plea was clearly bad. We have never had a moment's doubt whether that dictum would be retracted. The contrary doctrine is expressly stated in *Doctrina Placitandi,* and 1 *Mod.* 250. 3 *Mass. Rep.* 312. We were also present at the argument and decision of the case of *Barnard* vs. *Whiting,* in 1810, in which this very point was decided by all the judges then in court—viz. Sewall, Thatcher and Parker. That case is not reported.

The supplement to this volume contains two opinions given by the court, in 1784 and 1787, in answer to questions proposed to them by the senate—a very learned and able opinion delivered in 1768, by Judge Trowbridge—and ten cases decided while the late Chief Justice Cushing was on the bench.

We were forcibly struck with the importance and benefits of

* Brook's Reading is not mentioned in Reed's 'Complete Catalogue of Law Books.'

publishing the decisions of the courts by reading the case of *Hathaway* vs. *Valentine*, contained in the Supplement. It was decided in this case, in 1778—and a former decision of the same point in 1758, was cited by the court—that an executor or administrator could not maintain a real action, unless for the foreclosure of a mortgage.—In 1807, in the case of *Dean* vs. *Dean*, 3 *Mass. Rep.* 260, Judge Parsons suggested a doubt whether an administrator could maintain a real action to obtain seizin of the intestate's lands, unless he claimed as mortgagee—'*notwithstanding a long practice might be urged in favour of it.*' The court did not then decide this point, as the plaintiff failed on other grounds. But in the case of *Drinkwater* vs. *Drinkwater*, 4 *Mass. Rep.* 354, the court decided against an administrator's right to support such action. The absurd practice mentioned by Judge Parsons could never have existed after 1758, had the decision of that year been made known through the medium of reports.

We have room left only for a few remarks upon the manner in which the reporter has executed his duties, in the volume before us.

Mr. Tyng's reputation has long been established, and no one can justly say that this volume shows any relaxation of his diligence or failure of his accustomed accuracy. We have ever believed that the method of reporting, which Douglas prescribed for himself, and so successfully pursued, is the best that can be devised. We are aware that others, whose judgment is entitled to great respect, entertain a different opinion. Some would wholly exclude the arguments of counsel—and some would have them stated at length. Some would have a full copy of the pleadings, and make our reports, like those of Saunders and Lutwyche, a book of entries, as well as decisions. Others wish for nothing but the mere point decided, omitting statements either of arguments or of the reasoning of the court,—in the manner of many cases in Brownlow and Strange. Mr. Tyng, in the different volumes which he has published, has afforded us some little variety in these respects. But we decidedly approve of the method *generally* adopted in the present volume—which is, to give a succinct statement of the facts agreed, or stated in pleading—the points made and authorities cited at the bar—and the opinion of the court at full length.

Before Lord Mansfield came upon the bench, the judges in England generally gave their opinions seriatim. While he pre-

sided in the Kings Bench, the opinion of the whole court was generally pronounced by him—especially in cases where any time was taken for advisement. Lords Camden, Wilmot and Loughborough frequently did the same in the Common Pleas. The old practice is resumed in England,—but we are happy that it has not been adopted by the judges of our court. In Connecticut, where the Court of Errors consists of nine judges, the legislature have required that each one of them shall give his opinion and the reasons of it, on all questions that are decided by them. We hope their reporter is not required to publish so much tautology as this must unavoidably produce. One judge can state the opinion formed and the reasons suggested for it in joint consultation, in a manner much more beneficial to the hearer and reader, than would be the separate opinion of each.

We infer from the appearance of the English reports for the last fifteen years, that the judges do not write their opinions,—(at least, that the reporter receives no written opinions from them,) and that in most cases, they deliver them as soon as the argument is closed—without private consultation. It is said of Lord Hale, by Bishop Burnet, that 'he concealed his opinion in great cases so carefully, that the rest of the judges in the same court could never perceive it; his reason was, because every judge ought to give sentence according to his own persuasion and conscience, and not to be swayed by any respect or deference to another man's opinion.' We would by no means wish judges to renounce their persuasion and conscience, from respect or deference to each other. Consultation, however, has no such tendency—and we think the effect, which the biographer of Lord Hale so boastfully ascribes to his opinions when delivered, would have been produced much more decently, and to better public purpose, at the judge's chambers, than in open court. 'It happened sometimes', says Burnet, 'that when all the barons of the Exchequer had delivered their opinions, and agreed in their reasons and arguments, yet he coming to speak last, and differing in judgment from them, hath expressed himself with so much weight and solidity, that the barons have immediately retracted their votes, and concurred with him.' We presume nothing of this sort is now witnessed in England—a few instances of a similar occurrence would in these days, inevitably destroy the reputation and usefulness of any court.

When the opinion of the court is not written, it is impossi-

ble for the most scrupulously careful reporter always to state it correctly. Besides, expressions will escape the most accurate judge, when pronouncing an opinion *ore tenus*, which he would never commit to writing. A principle may be advanced as universal, which is only general—what is correct only in a qualified sense, may be stated absolutely, or without noticing the qualification. Between the mistakes of the judge and the reporter, a thousand errors creep into the books, and a thousand unnecessary suits are the consequence. We cannot, therefore, too much commend the *general* practice of our Supreme Judicial Court, in writing the opinions they deliver, and handing them over to the reporter. It is for the benefit of the profession and of the Commonwealth—and for the present and future honour of the judges themselves. Whoever has read the opinions of Lord Chief Justice Wilmot, published from his manuscripts since his death, and compared them with those reported by Wilson, Amblen and Blackstone—or the account, given by the Attorney General of the United States, of the opinion pronounced by Lord Mansfield, in the case of *The King* vs. *Wilkes*—and reported by Burrow—will not wish us to say any thing further in favour of written opinions, except to intimate a hope that the practice, which is now general, may become universal.

It will occur to every professional man, that the instances, in which our court have had occasion to deny, question or qualify any dictum of theirs as reported, have been in cases where the reporter has stated the point under a 'per curiam.' We believe there are some further corrections yet to be made in cases similarly stated. It is surprising that more inaccuracies do not appear, for the reasons above stated. It is beyond the reach of human correctness, accurately and fully to state a volume of cases, in which no written opinion is furnished by the court,—if any thing further than a statement of the judgment is attempted.

A very few deficiencies and errors in the present volume will now be suggested.

In the case of *Reed and wife* vs. *Borland*, p. 208, it does not appear from the statement made by the reporter, that the will in question contained any disposition of lands, tenements or hereditaments. This fact is to be inferred from the argument of the respondent's counsel—and from the marginal note of the point decided. For if this fact did not exist, there could have been no question to decide, of the nature which must have been before the court in that case.

In the case of *Hull* vs. *Little*, the court are reported to have said, that 'the expressions of the English statute of limitations are like those of ours.' The difference we have before stated.

The court say, in the case of *Webster* vs. *Coffin*, p. 199, that in *Knap* vs. *Sprague*, 9 *Mass. Rep.* 258, 'the constable was not liable, on account of the first attachment, because execution was not sued out within thirty days from the judgment.'—This does not appear in the report of that case.

In *Williams* vs. *Root*, p. 275, the court are reported to have said, that the words *justification* or *excuse* in the statute of 1783, cap. 42, § 7, 'mean *every* matter which may bar the plaintiff's right to recover, whether requiring a special plea by the common law or not.' This is too general and broad an expression to be used since the decision of *Holmes* vs. *Wood*, 6 *Mass. Rep.* 1.

Critical examiners will find several little inaccuracies, which we have not mentioned.

The reporter intimated, in the advertisement prefixed to the twelfth volume, that 'some of the decisions of a less important character' would probably be omitted in future, for the purpose of making room for the substance of the arguments at the bar, in those that should be reported. It appears from three distinct references made by the court in this volume, to former decisions, that omissions have been made accordingly. And the second point of evidence, which we have stated above, is understood not to have been first decided in *Murphy's* case. We do not object to the omission of cases which are of little importance—but we fairly derive an additional argument in favour of publishing the reports, from the fact that four questions were raised in 1817, which would have slept, had the former decisions been published.

We have only to repeat, that the method adopted by the reporter, in this volume, is in our opinion preferable to any which he has before taken, and that we believe it to be the best which he can pursue. We trust the profession and the Commonwealth will long enjoy and properly appreciate the labours of Mr. Tyng. 'But,' as is said in the preface to Ley's Reports, 'the usefulnes of the booke will better appear by itselfe, then any thing we can say for it. Read and be your owne judges. We speake to such as are ingenious and candid.'